

9. 38–2–7.4.b.1.G.1. Ground Cover Vegetation

This provision is amended by deleting the word “excessive” from the last sentence. In addition, the following language is added to the end of this provision:

Lesser or no vegetative cover may only be authorized by the Secretary when mulch or other soil stabilizing practices have been used to protect all disturbed areas unless demonstrated that the reduced cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

These amendments are intended to satisfy the required program amendment at 30 CFR 948.16(xxxx). The requirement at 30 CFR 948.16(xxxx) provides that the West Virginia program must be amended to:

(1) Delete the word “excessive” at CSR 38–2–7.4.b.1.G.1.; and (2) provide that at CSR 38–2–7.4.b.1.G.1., lesser or no vegetative cover may only be authorized by the Director [Secretary] when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

The amendments proposed by the State are identical to the requirements at 30 CFR 948.16(xxxx) except as follows. The State’s proposed language includes the word “unless” where the language of the required amendment uses the word “and.” The effect of the word “unless” is that the amendment provides that lesser or no vegetative cover may be authorized if: (1) Mulch or other soil stabilizing practices are used; or (2) the reduced vegetative cover is sufficient to control erosion and attendant air pollution, in which case mulch or other soil stabilizing practices need not be used as provided by 30 CFR 816/817.114. We find that with the removal of the word “excessive,” the required program amendment at 30 CFR 948.16(xxxx) is satisfied and the amendment can be approved. Therefore, the required program amendment at 30 CFR 948.16(xxxx) can be removed. Using the word “unless” is sufficient to assure the control of erosion while more effectively promoting tree establishment by not requiring mulch or other stabilizing practices that may inhibit tree establishment where they are not needed to control erosion.

10. 38–2–7.4.b.1.G.3. Rills and Gullies

This provision is being amended by adding the following language to the end of the existing provision:

and/or disrupt the approved postmining land use or the establishment of vegetative cover

or cause or contribute to a violation of the water quality standards for the receiving stream.

As amended, this provision provides as follows:

7.4.b.1.G.3. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream.

The Federal regulations at 30 CFR 816.95(b) require that rills and gullies that either (1) disrupt the postmining land use or the reestablishment of the vegetative cover or (2) cause or contribute to the violation of water quality standards be filled, regraded, or otherwise stabilized. We understand the amended State provision to mean that a permittee is generally not authorized to repair rills and gullies, except those rills and gullies that are unstable and/or disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. This provision is intended to eliminate the compaction of revegetation soils that would normally take place during routine repair of rills and gullies. Such compaction can have a detrimental effect on tree growth. Therefore, the limitation on the repair of rills and gullies is intended to help assure the success of the commercial forestry postmining land use.

An area of potential concern with this provision is that it does not explicitly require the repair of rills and gullies that disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. On the other hand, the proposed provision in no way prohibits the repair of such rills and gullies. Moreover, the approved State program already requires restoration of the premining land use, or establishment of an approved alternative postmining land use after mining, (CSR 38–2–7.1.a., 7.3, respectively), the establishment of vegetative cover (38–2–7.4.b.1.G), and compliance with applicable water quality standards (CSR 38–2–14.5.b). It necessarily follows from these provisions that rills and gullies that could prevent compliance with the above requirements must be filled, regraded, or otherwise stabilized. For this reason, we find that the proposed amendment at CSR 38–2–7.4.b.1.G.3, taken in concert with the above-referenced State program requirements, does not render the program less

effective than 30 CFR 816.95(b) and can be approved so long as it is implemented in a manner consistent with that Federal provision. If, in future reviews, we should determine that West Virginia is implementing this provision in a manner that is inconsistent with this finding, a further amendment may be required. In addition, we find that this amendment satisfies the required program amendment codified at 30 CFR 948.16(yyyy), which can, therefore, be removed.

11. 38–2–7.4.b.1.H.2. Commercial Forestry and Forestry—Tree Species and Compositions

This provision is amended by deleting “7.4.b.1.G.1.” in two places and replacing the deleted citation with “7.4.b.1.H.1.” We find that this amendment satisfies the required program amendment at 30 CFR 948.16(zzzz) and can be approved. The requirement at 30 CFR 948.16(zzzz) can be removed.

12. 38–2–7.4.b.1.I.2. Commercial Forestry and Forestry—Phase II Bond Release

This provision is amended by deleting a reference to CSR 38–2–7.4.d.1.G.1 and adding in its place a reference to CSR 38–2–7.4.b.1.H.1 in the third sentence. The phrase “where there is potential for excessive erosion on slopes greater than 20%” is deleted from the fourth sentence. The words “and rock cover” are deleted from the fourth sentence and are replaced by the words “except where a lesser vegetation cover has been authorized.”

We find that the deletion of the phrase “where there is potential for excessive erosion on slopes greater than 20%” satisfies the required program amendment at 30 CFR 948.16(bbbbb) and can be approved. We find that the deletion of the words “rock cover” satisfies the required program amendment at 30 CFR 948.16(ccccc) and can be approved. Therefore, the required program amendments at 30 CFR 948.16(bbbbb) and 30 CFR 948.16(ccccc) have been satisfied and can be removed.

We find that the deletion of the reference to CSR 38–2–7.4.d.1.G.1 and the addition in its place of a reference to CSR 38–2–7.4.b.1.H.1 in the third sentence accurately corrects an erroneous citation and can be approved. This amendment also satisfies the required program amendment at 30 CFR 948.16(ddddd) which can, therefore, be removed.

We find that the addition of the words “except where a lesser vegetation cover has been authorized” does not, by itself,